

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

State Farm Mutual Automobile Insurance)
Company,)
)
 Plaintiff,)
)
)
 v.) Case No. 16-13040
) Hon. Avern Cohn
Elite Health Centers Inc.,)
Elite Chiropractic, P.C.,) Magistrate Judge
Elite Rehabilitation, Inc.,) Anthony P. Patti
Midwest Medical Associates, Inc.,)
Pure Rehabilitation, Inc.,)
Derek L Bittner D.C., P.C.,)
Mark A. Radom,)
Derek Lawrence Bittner, D.C.,)
Ryan Matthew Lukowski, D.C.,)
Michael P. Draplin, D.C.,)
Noel H. Upfall, D.O.,)
Mark J. Juska, M.D.,)
Superior Diagnostic, Inc.,)
Chintan Desai, M.D.,)
Michael J. Paley, M.D.,)
Dearborn Center for Physical Therapy, LLC,)
Michigan Center for Physical Therapy, Inc., and)
Jayson Rosett,)
)
 Defendants.)

**STATE FARM MUTUAL'S
MOTION TO COMPEL JANET ROSENBERG
TO PRODUCE DOCUMENTS RESPONSIVE TO SUBPOENA**

Plaintiff State Farm Mutual Automobile Insurance Company ("State Farm Mutual" or "SFMAIC"), pursuant to Fed. R. Civ. Proc. 26 and 45, respectfully submits this Motion to Compel Janet Rosenberg to produce documents responsive

to a subpoena issued by SFMAIC (“Motion”). This Motion is based on the accompanying brief, which is incorporated herein. Counsel for SFMAIC conferred with counsel for Janet Rosenberg on September 4, 2018 and September 7, 2018. During the September 7 meet and confer, counsel said Rosenberg would provide updated responses on September 10. To date and despite several follow-up emails from SFMAIC, Rosenberg and her counsel have failed to update her responses or even respond to SFMAIC’s emails. On September 24, 2018, SFMAIC requested leave to file a motion to compel against Rosenberg, *see* Dkt. 318, and served a copy on Rosenberg’s counsel. Rosenberg filed no response. On October 3, 2018, the Court granted SFMAIC’s request to file a motion to compel against Rosenberg.

Dated: October 17, 2018

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**BRIEF IN SUPPORT OF
STATE FARM MUTUAL'S MOTION
TO COMPEL JANET ROSENBERG TO
PRODUCE DOCUMENTS RESPONSIVE TO SUBPOENA**

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STATEMENT OF ISSUE PRESENTED

Whether Janet Rosenberg, a non-attorney employee of Michael Morse's law firm who was heavily involved in the solicitation component of Defendants' fraud scheme, should be ordered to produce highly relevant documents reflecting patient referrals and solicitation and her relationship with Defendants, including Jayson Rosett.

State Farm Mutual's Response: Yes

Janet Rosenberg's Response: No

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CONTROLLING OR MOST APPROPRIATE AUTHORITIES

SFMAIC v. Fayda, 2015 WL 7871037 (S.D.N.Y. Dec. 3, 2015)

SFMAIC v. Warren Chiropractic & Rehab Clinic, PC, 315 F.R.D. 220 (E.D. Mich. 2016)

Strategic Mktg. & Res. Team, Inc. v. Auto Data Sols., Inc., 2017 WL 1196361 (E.D. Mich. Mar. 31, 2017)

I. Introduction and Relevant Background

Janet Rosenberg (“Rosenberg”) should be compelled to produce all documents responsive to SFMAIC’s Subpoena. Rosenberg is the “marketing director” for Michael Morse’s law firm and, in that role, worked with defendant Jayson Rosett (“Rosett”) to solicit auto accident victims on behalf of Morse who they would steer to Defendants’ clinics for treatment. Rosett has already admitted that he participated in the unlawful solicitation of accident victims for Morse and Defendants. Specifically, on October 12, 2018, he submitted a letter to the Court stating that a federal investigation revealed he “conspired with others including . . . named Defendants to bribe police officers to obtain unofficial accident reports. . . . After the unofficial reports were obtained, they were provided to the Elite [Entities] and the . . . Morse law firm for the purpose of soliciting patients for the Elite [Entities] and the . . . Morse law firm.” Dkt. 337. In response, Morse’s counsel told the *Detroit News*, “Morse and his law firm are not a party to any legal action which asserts that either of them improperly obtained police reports . . . ***The reason is simple. They did not.***” See Ex. 1 (emphasis added). This statement is demonstrably false. Emails produced by Rosett establish that Morse’s firm, along with Rosett and the Elite Defendants, knowingly and improperly used unapproved police reports to solicit clients for Morse who they steered to Defendants for treatment. Rosenberg was heavily involved in this solicitation.

In early 2010, Rosett started purchasing “unapproved” police reports (before

they were publicly available to law enforcement, attorneys or insurers) from Detroit police officers which he used to solicit clients for Morse. Initially, Rosett would personally call auto accident victims using the alias “Lou” and then email the victims’ information to Rosenberg. *See* Ex. 2 (Rosett emailing Rosenberg, “Hi Jan here is a for sure one. I said the best auto law office will be calling her real shortly.”) Rosenberg, knowing Rosett had identified auto accident victims from unapproved police reports and called himself “Lou” to conceal his true identity, would then call the accident victims to solicit them for Morse. *See* Exs. 3–6. When accident victims asked how Rosenberg got their contact information, she lied. *See, e.g.*, Ex. 4 (Rosenberg emailing Rosett that “[e]veryone I talked to today..I mention Lou, next thing they ask me is ‘yeah but how did LOU get my number??’ I’ve been talking my wa[y] through that but just a heads up in case there is anything else you can say”).

In exchange for soliciting clients for Morse, Rosenberg directed the chiropractors who treated Morse’s clients to refer them to Rosett’s PT clinics for treatment. Ex. 7 (Rosenberg confirming to Rosett that chiropractor referred three patients to Michigan Center for PT and promising more patient referrals: “I need u to be patient and know I’m on it.”); Ex. 8 (Rosenberg emailing Rosett she “spoke to 2 chiros today and asked them each to refer someone to [Rosett’]s] PT within the next 7 days”); *see also, e.g.*, Exs. 9–10.

The process of Rosett calling accident victims and then emailing their

information to Rosenberg created a lag time between when Rosett sent Rosenberg the potential clients' information and when she called them, which sometimes resulted in the potential client hiring a different lawyer. *See* Ex. 11 (Rosenberg emailing Rosett that potential client "told me he has a lawyer already!! Wtf? No clue what happened, but he was called promptly!"); Ex. 12 (Rosenberg emailing Rosett that a potential client "hung up from Lou and called another lawyer and has chosen that firm!!!!"). To remedy this situation, Rosenberg and Rosett figured out a way for Rosett to patch his calls with potential clients directly into Morse's office while he had them on the phone. *See* Ex. 13 (Rosenberg explaining to Rosett that they could "connect you right to our office with your own direct dial number so our name won't come up on caller ID"); Ex. 14 (email from Rosenberg to Rosett discussing auto accident victim who signed with attorney Carl Collins after speaking to "Lou" and exclaiming "WE NEED TO GET THAT PHONE SET UP!!"); *see also* Exs. 15–16.

Around the time Radom and Bittner formed the Elite Entities, Morse and Rosett agreed to an arrangement in which Rosett would start hand-delivering unapproved police reports to Morse's office. On August 12, 2011, Morse told Rosett, "*Let's do the police report thing. Just get them to me and I will get you more active treating patients. It will work[.]*" Ex. 17. Rosett then started to hand deliver unapproved police reports to Morse. *See* Exs. 17–20. At some point, Rosenberg began receiving these reports for Morse on a daily basis. Ex. 21

(3/14/2013 emails between Rosenberg and Rosett: “[R]eports everyday!!” with sample of AIB spreadsheet attached).

In mid-2012, Bittner, Radom, and Rosett started planning to use an entity formed by Rosett, Accident Information Bureau, LLC (“AIB”) as a “call center” to solicit clients for Morse and patients for the Defendants using unapproved police reports that AIB purchased, using funds provided by the Elite Defendants. *See* Exs. 22–24. Indeed, on June 8, 2012, when AIB’s operations were ramping up, Bittner emailed two Elite chiropractors, including defendant Ryan Lukowski, to tell them they were “starting a mass marketing blitz.” Ex. 25. Bittner directed the specific treatment and attorney referral protocols the chiropractors should use, including to have patients contact Rosenberg at Morse’s firm. *Id.*

Rosenberg knew the police reports used to solicit auto accident victims to become clients of Morse were “unapproved.” First, many were stamped “Unapproved Report.” *See* Ex. 26 (5/13/2013 email from Rosett to Rosenberg attaching sample set of police reports). Second, Rosenberg emailed Rosett that Morse sent a mailer to potential clients “that says we have your police report, please call us, blah blah blah[,]” but “[f]or the PR’s you send us, we can’t access those online when people ask us about them” because they were “not on those websites.” Ex. 27. Third, there was no reason for Morse’s firm to obtain police reports from Rosett once they were approved when all law firms could access the

reports, as it would have deprived Morse of his competitive advantage in soliciting clients.

II. The Subpoena Served On Rosenberg

In light of the foregoing, the Subpoena seeks (1) communications with Defendants and related third-parties regarding solicitation or referral of accident victims and with anyone regarding police reports received from Defendants or AIB, (2) payments for police reports, (3) documents reflecting the receipt or delivery of non-public police reports from Defendants or AIB, any attempts to obtain non-public police reports, and the use of such reports to solicit accident victims, and (4) documents regarding the referral of Morse clients to Defendants, Horizon Imaging, Plaintiff Investment Funding, or Med-Lien Solutions. Ex. 28.¹

¹ Request No. 1: All Communications with any Defendant, Robert Rosett, Horizon Imaging, LLC, AIB, and/or 2875 Maple LLC regarding (a) accident reports and/or (b) the solicitation of accident victims; Request No. 2: All Communications with anyone regarding any mechanism to transfer or connect telephone calls made to or received on any telephone number used by Jayson Rosett or AIB to the Mike Morse Law Firm . . .; Request No. 3: All Communications with anyone regarding (a) accident reports received, directly or indirectly, from Rosett, any of the other Defendants, or AIB; and/or (b) the use of information contained in accident reports received, directly or indirectly, from Rosett, any of the other Defendants, or AIB, to solicit accident victims to be clients of the Mike Morse Law Firm; Request No. 4: All Documents regarding or reflecting (a) the receipt and/or delivery of accident reports, directly or indirectly, from Jayson Rosett, any of the other Defendants, or AIB, (b) any attempts to view and/or obtain any unapproved accident reports, and/or (c) the use of information contained in unapproved police reports received, directly or indirectly, from Rosett, any of the other Defendants, or AIB, to solicit accident victims to be clients of the Michael Morse Law Firm; Request No. 5: All Payments made to or received from anyone regarding the provision of accident reports, directly or indirectly, from Jayson Rosett, any of the other Defendants, or AIB; Request No. 6: All Documents and Communications regarding or reflecting

Rosenberg lodged boilerplate objections claiming the Subpoena seeks information not relevant or proportional to SFMAIC's claims and is not limited to the 221 patients identified in the Complaint. Ex. 29. Rosenberg also claimed "any responsive documents, if any were to exist, are not in [her] possession, custody or control . . ." *Id.* Rosenberg's objections lack merit. Nor is it credible that Rosenberg has no responsive documents in her possession. Rosett's produced more than 200 emails to or from Rosenberg, including nearly 80 emails to or from Rosenberg's personal email account. The Court should grant the Motion.

III. Legal Analysis

Rosenberg's objections are general and boilerplate and are therefore "tantamount to no objection at all and [should] not be considered by the Court." *Strategic Mktg. & Res. Team, Inc. v. Auto Data Sols., Inc.*, 2017 WL 1196361, at *2 (E.D. Mich. Mar. 31, 2017); *see Dkt. 276 at 12269*. They should be deemed waived. *See Sabol v. Brooks*, 469 F. Supp. 2d 324, 329 (D. Md. 2006). Even if the Court considers Rosenberg's objections, they lack merit.

First, the Subpoena seeks highly relevant documents focusing on Rosenberg's role in (1) the solicitation of individuals on behalf of Morse from non-public unapproved police reports illegally purchased by Rosett, AIB, or any other

the referral of clients of the Mike Morse Law Firm to any Defendant, the Rosett PT Entities, and/or Horizon Imaging, LLC; Request No. 7: All Communications with Michael Morse and anyone else at the Mike Morse Law Firm regarding the referral of any client who was or became a patient of any Defendant, Horizon Imaging, LLC, and/or the Rosett PT Entities to Plaintiff Investment Funding, LLC and/or Med-Lien Solutions, LLC.

Defendant, and (2) the referral of Morse clients to Defendants' clinics, or to related third parties. SFMAIC alleged that patient solicitation and referrals were an essential component of Defendants' scheme. *See, e.g.*, Compl. ¶¶ 80–91. As set forth above, Rosenberg, who works for Morse, actively participated in the solicitation of accident victims on Morse's behalf and steered Morse's clients to Defendants' clinics. In doing so, Defendants, Morse and those working for him, including Rosenberg, knew they were not permitted to have or use the non-public reports they used to solicit individuals, but used them anyway so that they would have a competitive advantage over other firms and providers. In addition, documents show that Rosenberg, on behalf of Morse, steered Morse's clients to Defendants' clinics and coordinated patient referrals from Defendants' clinics to Morse's firm. Given Morse's apparent role in the scheme and the significant evidence of a quid pro quo referral arrangement between his firm and Defendants' clinics — designed to enrich themselves rather than benefit any patient/client — the requested documents into these matters are clearly relevant.²

² While Rosenberg does not explain her vague, general objection that the Subpoena "is not limited" to the 221 patients identified in the Complaint, Ex. 29, her objection is meritless. Under Rules 26 and 45, "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional . . ." *SFMAIC v. Warren Chiropractic & Rehab Clinic, PC*, 315 F.R.D. 220, 222 (E.D. Mich. 2016). SFMAIC specifically alleges that Defendants engaged in improper solicitation and had quid pro quo referral arrangements with . . . a "PI Attorney," *i.e.*, Morse, *see* Compl. ¶¶ 80–91, and the Subpoena specifically requests documents reflecting those arrangements.

Second, the Subpoena is proportional. Under the Federal Rules, courts should “evaluate whether the benefit of the discovery sought is proportional to the burden of producing it, taking into account issues like access, importance, and available resources.” *State Farm Mut. Auto. Ins. Co. v. Fayda*, 2015 WL 7871037, at *4 (S.D.N.Y. Dec. 3, 2015). Not only are the requested documents relevant, but Rosenberg has failed to argue burden. SFMAIC has no other access to the requested documents. Morse has refused to produce any documents, and, as reflected in SFMAIC’s pending request for leave to file sanctions, the Elite Defendants have not completed their ESI production. Finally, this case involves issues of public importance. *See Doe v. United States*, 253 F.3d 256, 267 (6th Cir. 2001) (noting public importance of combatting health-care fraud).

IV. Conclusion

The Court should grant the Motion. If Rosenberg maintains she has no responsive documents, the Court should order her to sign an affidavit affirming same and detailing the steps she took to search for responsive documents.

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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. I also certify that I served the foregoing on counsel for Rosenberg via first-class mail and email at the following addresses:

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